IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

COURT'S ORDER WHETHER THE CASE IS OR IS NOT APPROVED FOR REPORTING

[Chapter VIII, Rule 32(2) (b)]
Description of case

S.C.C. Revision No. 368 of 2001 **Decided on: 31st March, 2006**

A.F.R. (Approved for Reporting)
Not approved for reporting

Date 31.03.2006

(Initial of Judge)

Note: Bench Reader will attach this at the top of the first page of the judgment when it is put up before the Judge for signature.

Reserved Judgment

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

S.C.C. Revision No. 368 of 2001
(Old No. 444 of 1987)

Atiqur Rehman S/o Azimuddin
R/o 1/107, New Jain Market,
Vikas Nagar, Dehradun.

…….. Revisionist

Versus

Smt. Shashi Bala Jain
W/o Satish Jain
R/o New Jain Market,
Vikas Nagar, Dehradun.

…… Respondent

Mr. Sharad Sharma, learned counsel for the revisionist.
Mr. Sudhir Kumar, learned counsel for the respondent.

Hon. Prafulla C. Pant, J.

This revision, preferred under Section 25 of the Provincial Small Cause Courts Act, 1887, is directed against the judgment and decree dated 27.04.1987, passed by learned Judge, Small Causes Court / Addl. District Judge / Dehradun in Small Causes Court Suit No. 26 of 1983, whereby the said suit for arrears of rent and ejectment of the defendant from the shop in suit, is decreed.

2) Brief facts of the case are that the plaintiff / respondent is the landlady of the property No. 1/107, New Jain Market, Vikas Nagar, Dehradun. In said property, in one of the shops, the defendant/revisionist was the tenant. As per the plaint case, provisions of the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 (for brevity, hereinafter, the Act No. 13 of 1972) were not applicable to

the building on the date of the institution of the suit as the construction was new. The plaintiff vide notice dated 22.05.1983 terminated the tenancy of the defendant after 30 days of service of notice, and claimed arrears of rent in respect of which alleged default was committed by the defendant. Said notice was served under Section 106 of the Transfer of Property Act, 1882. The defendant contested the suit and filed the written statement before the trial court, in which it is pleaded that the building is old and provisions of the Act No. 13 of 1972 are applicable. The defendant has pleaded that the shop was constructed in the year 1968, as such it had already completed ten years when the suit was instituted in the year 1983. The defendants further denied having committed any default in payment of rent. It is alleged by the defendant / revisionist before the trial court that he has deposited the rent due in the court of Munsif, Dehradun under Section 30 of the aforesaid Act as the landlady refused to accept the same.

3) The trial court formulated following points of determination while deciding the case:

1) *Whether, the provisions of U.P. Act No. 13 of 1972 are not applicable to the shop in question? It so, its effect?*
2) *Whether, the defendant committed default in payment of rent?*
3) *Whether, the notice terminating the tenancy was invalid?*
4) *To what relief, if any, the plaintiff is entitled?*

4) After recording the evidence and hearing the parties, the trial court found that the building in question was the

construction of the year 1975 and, as such, provisions of the U.P. Urban Building (Regulation of Letting, Rent and Eviction) Act, 1972 were not applicable to the same. It further found that there is no infirmity in the notice served on the defendant under Section 106 of the Transfer of Property Act, 1882. Holding that the defendant has committed default in payment of rent and his tenancy stood terminated from 30th day of the service of notice, the suit was decreed for arrears of rent and ejectment. Aggrieved by the same, this revision has been preferred by the defendant.

5) Heard learned counsel for the parties and perused the record.

6) It is argued on behalf of the revisionist that the shop in question was the construction of 1968 and not of the year 1975, and as such, the trial court has erred in law in holding that the provisions of the Act No. 13 of 1972 are inapplicable to the building in question. To arrive at the correct conclusion as to the year of construction, it is pertinent to mention here Explanation I to Proviso to sub-section (2) of Section 2 of the aforesaid Act, which provides as under:

> ***"Explanation I –For the purposes of this section,-***
>
> *(a)the construction of a building shall be deemed to have been completed on the date on which the completion thereof is reported to or otherwise recorded by the local authority having jurisdiction, and in the case of a building subject to assessment, the date on which the first assessment thereof comes into effect, and where the said dates are different, the earliest of the*

said dates, and in the absence of any such report, record or assessment, the date on which it is actually occupied (not including occupation merely for the purposes of supervising the construction or guarding the building under construction) for the first time:

Provided that there may be different dated of completion of construction in respect of different part of a building which are either designed as separate units or are occupied separately by the landlord and one or more tenants or by different tenants;"

In view of aforesaid provision, since the house in question is subject to the assessment of the municipal tax, it is relevant to examine the extract of the house tax assessment filed by the parties to arrive at the correct conclusion as to the dates of construction of the building.

7) Learned counsel for the revisionist drew attention of this Court to the extract of the house tax assessment for the year 1968-75, a copy of which is not only filed before the trial court but is also filed with the rejoinder affidavit, filed in this Court as Annexure R.A. 1. Said extract pertains to the house No. 372, but the property number as per the plaint case is 1/107 in the Jain Market, Vikas Nagar in respect of which the first assessment appears to have been made for the year 1975-80. The D.W. 1 (Atiqur Rehman) himself has admitted shop in question to be part of Shashi Cinema building. The said building from the documentary evidence appears to have been assessed for house tax for the year 1975-80. The next house tax assessment is of the year 1980-85, a copy of which is Ext. No. 5 (paper No. 25-C) in the trial court records. In

said paper name of revisionist appears as tenant and house number is mentioned as 107. A copy of the extract of assessment for the year 1975-80 is marked as Ext. No. 4 (paper No.24-C) in the trial court record. These documents read with the oral evidence adduced by the parties clearly establish that the first assessment of the shop in question is of the year 1975. As such, since the building had not completed ten years in 1983, as such, this Court is in agreement with the learned trial court that the provisions of the U.P. Act No. 13 of 1972 are not applicable to the shop in question. (Now under the amendment law a building comes under the purview of the Act after forty years of construction).

8) It is further argued by learned counsel for the revisionist that the landlady Shashi Bala did not dare to come in the witness box, as such, the oral evidence recorded on behalf of the plaintiff should not have been believed by the trial court. In view of the principle of law laid down in ***Pandurang Vs. Ramchandra reported in A.I.R. 1981 Supreme Court 2235,*** mere non-examination of plaintiff himself does not disentitle him of the relief, if the fact is otherwise proved on the record. Relationship of landlord and tenant is not denied in the present case. Not only this, the witness P.W. 1, a servant of the plaintiff has made statement on behalf of the plaintiff on his personal knowledge, as such, the trial court has not committed any error of law in believing the same.

9) Mr. Sharad Sharma, learned counsel for the revisionist drew attention of this Court to Section 39 of the U.P. Act No. 13 of 1972 and argued that during the pendency of suit

the building has completed ten years and it has come under the purview of the Act, as such, the defendant / revisionist should have been given an opportunity to seek protection of sub-section (4) of Section 20 of the Act, to pay the rent, interest and costs so that he gets protection from ejectment. The submission of learned counsel for the revisionist is misconceived. From the perusal of Section 39 of the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972, it is clear that the section saves those tenants in respect of whom the suits were pending on the date of commencement of the aforesaid Act. The aforesaid Act came into force in the year 1972. At that stage, the present suit in question was not pending, as such, there is no question of applicability of provisions of Section 39 in the present case, nor the defendant / revisionist is entitled to seek protection or shelter of sub-section (4) of Section 20 of the Act. Even otherwise, the defendant has not deposited any rent with 9% interest and cost of the suit on the first day of hearing, as such, the aforesaid argument carries no force.

10) In view of the above discussion and for the reasons as discussed above, I see no force in the revision and the same is liable to be dismissed. The revision is dismissed. However, the defendant (revisionist) is allowed to vacate the shop in question within a period of three months from today. No order as to costs.

(Prafulla C. Pant, J.)

Dt. March 31, 2006.
H. Negi